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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
) IB Docket No. 96-261
International Settlement Rates)

COMMENTS OF GTE SERVICE CORPORATION

GTE Service Corporation on behalf of its
affiliated telephone operating companies

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SUMMARY

GTE Service Corporation, on behalf of its affiliated telecommunications companies (collectively "GTE"), supports the development of competition in foreign markets and consider such competition to be the most effective means of reducing accounting rates. GTE is concerned, however, about the approach suggested in this Notice of Proposed Rulemaking ("NPRM") to reform the international accounting rate system. While reducing international calling prices for consumers is a welcome goal, GTE respectfully submits that the Commission needs to take into account several factors unaddressed in the NPRM.

GTE suggests that the Commission's proposed adoption of unilaterally-imposed international benchmarks is unnecessary because market forces are reducing settlement rates. Imbalanced traffic flows, not settlement rates, are the true cause of the perceived problem of U.S. net settlement outpayments. Indeed, settlement outpayments will not be eliminated by reducing settlement rates because much of the traffic imbalance results from U.S. demographics, the calling habits of U.S. consumers, call-back services and by other innovations that bypass the traditional settlement scheme and distort traffic flows.

Accordingly, the Commission need not take any action at the current time. The continuous development of competitive markets will accelerate the continuing reductions in settlement rates. GTE suggests that the Commission should focus its efforts on fostering competitive markets rather than unilaterally imposing the approach set out in the NPRM.

GTE regards the unilateral enforcement proposals in the NPRM as inconsistent with treaty obligations under the agreements constituting and governing the International Telecommunication Union ("ITU") and in excess of the jurisdiction and authority granted the Commission under the Communications Act. Even though the Commission states that its

proposed action would be directed only to U.S. carriers under its jurisdiction, the actual effect of the proposed sanctions would be to dictate to foreign carriers the rate they could charge for use of their domestic networks. The NPRM raises concerns about the proper role and conduct of the Commission in a complex international environment characterized by national sovereignty, mutuality of agreements, treaty obligations of the United States and the emerging regime of trade in services under the Uruguay Round Trade Agreements, especially the General Agreement on Trade in Services ("GATS"). Indeed, the Commission's proposed benchmarks may harm progress toward competitive telecommunications markets.

The transition periods proposed by the Commission are unrealistic and arbitrary considering the state of evolution and infrastructure requirements in telecommunications in developing countries. The transition periods in the NPRM ignore the evidence afforded by the experience of the United States and Europe about the time required to introduce competition to their telecommunications markets. The process of moving from a monopoly to a competitive environment in the telecommunications sector is an extremely complex one involving delicate balancing of economic, social, political and public policy considerations, as well as extensive legal and regulatory changes. The United States has been on this evolutionary path for over twenty years and is not yet finished, as evidenced by the passage of the Telecommunications Act of 1996 and the Commission's ensuing activity. In fact, the United States is still wrestling with cross-subsidies, cost-based pricing and universal service. Likewise, the European Union started the process towards competitive markets last decade and will continue to address transition issues into the next decade. It is unrealistic to assume that developing countries around the world can work their way through the same complex labyrinth within four years.

In light of these serious concerns, GTE encourages the Commission not to take any precipitous action to lower settlement rates. Instead, GTE urges the Commission at least to allow developing countries to continue their progress toward competitive markets pursuant to privatization and market liberalization plans that balance economic, financial, social and political objectives.

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COMMENTS OF GTE SERVICE CORPORATION

I. INTRODUCTION

GTE Service Corporation, on behalf of its affiliated telecommunications companies (collectively "GTE"), through its attorneys, herein comments on the Commission's Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding. GTE supports the Commission's overall goal of encouraging progress towards accounting rates produced by increasing competition in international services.¹ GTE is concerned, however, about the precipitous approach taken in the NPRM to reform the international accounting rate system. While lowering international calling prices for consumers is a laudable goal, the Commission needs to focus on more than just accounting rates and should take into account several factors unaddressed in the NPRM. Any analysis of settlement rates should be market-based. GTE respectfully submits that imbalanced traffic flows, not settlement rates, are the true cause of the U.S. net settlement outpayments. If traffic flows are equal, no settlement payment occurs. The Commission's proposed benchmarks simply cannot address the underlying traffic flow

¹ See International Settlement Rates, FCC 96-484, ¶ 3 (Dec. 19, 1996) (*Notice of Proposed Rulemaking*) ("NPRM").

imbalance caused by the calling habits of U.S. consumers, call-back services and by other market-inspired innovations that manipulate the traditional accounting rate system. The Commission need not and should not adopt the proposed international settlement rate benchmarks; rather, it should focus on fostering competitive markets, which will drive accounting rates to appropriately lower levels in the future. If, however, the Commission pursues its policy of imposing cost-based settlement rate benchmarks, GTE urges the Commission to recognize that foreign carriers negotiating new accounting rate agreements will expect U.S. carriers' rates for call termination also to be demonstrably cost-based.

GTE is also concerned that the Commission is proposing to proceed with an unnecessarily aggressive unilateral effort at a time when, as the Commission admits, the international community is actively pursuing a "far more open and competitive" international telecommunications market,² and U.S. carriers are making "important strides in achieving lower settlement rates."³ The Commission's proposal appears inconsistent with WTO negotiations, the role of the ITU in reforming the settlements system and prior U.S. policy. Moreover, the Commission's jurisdiction to engage in unilateral action is open to serious

² See NPRM ¶ 14. As the Commission noted, members of the World Trade Organization ("WTO") are engaged in talks to liberalize trade in basic telecommunication services and we anticipated to reach an agreement by February 15, 1997. *Id.* In Europe the member states of the European Union ("EU") have pledged to dismantle competitive barriers by January 1, 1998. *Id.* "The ITU remains committed to finding an inclusive, multilateral solution in which all countries move forward together." Dr. Pekka Tarjanne, Americas Geopolitical Challenges: Trade in Telecom Services (June 10, 1996) (Speech to the Americas TELECOM Strategies Summit and the Technology Summit) ("Tarjanne Speech, June 10, 1996").

³ NPRM ¶ 26.

question and is inadequately discussed in the NPRM.⁴ Accordingly, GTE recommends that the Commission refrain from unilaterally prescribing settlement rates and, instead, continue to pursue lower settlement rates and competitive market principles on a country-by-country basis through bilateral and multilateral negotiations. If the Commission decides to prescribe benchmark rates unilaterally, however, GTE recommends that the Commission implement the benchmark rates and transition periods in a manner fair to developing countries and consistent with other broad U.S. policy objectives such as the Global Information Infrastructure.

The Commission's proposed benchmark methodology is flawed because it relies in part on the tariffed rate for the national extension component, which is often underpriced for developing countries and needs to be rebalanced. GTE is also concerned by the limited transition time provided to developing countries to reach NPRM benchmarks. The proposed transition periods do not accurately reflect the needs of developing countries in their evolution from monopoly to competitive-based telecommunications markets. In light of the U.S. and European experiences, GTE suggests that the Commission extend the transition periods to more realistically reflect the complex evolution to competition. As a final point, GTE observes that the Commission's concerns about anti-competitive behavior are unrealistic and its proposed anti-competitive measures are unnecessary.

⁴ The Commission's lack of authority to prescribe benchmark rates unilaterally is discussed in Appendix A. The remarks and positions contained in Appendix A constitute an integral part of the submission and are incorporated as part of GTE's comments.

II. THE COMMISSION SHOULD NOT FOCUS ON THE LEVEL OF SETTLEMENT RATES ALONE, BUT SHOULD CONSIDER THE COMPLEX DYNAMICS OF COLLECTION RATES, TRAFFIC FLOWS AND NET SETTLEMENTS IN ADOPTING A FINAL APPROACH IN THIS MATTER.

Settlement rates are only one factor affecting the Commission's broader objectives of promoting competitive markets and ensuring that U.S. consumers benefit from lower U.S. collection rates. The interaction of collection rates, traffic flows, competition, market innovations, settlement outpayments and regulatory policies must be considered in deciding upon a regulatory approach that will best achieve the Commission's goals within the context of established international principles and relationships.

Under the Commission's International Settlements Policy ("ISP"), U.S. carriers are subject to three principles guiding settlement arrangements with foreign carriers: (1) the equal division of accounting rates; (2) non-discriminatory treatment of U.S. carriers; and (3) proportionate return of U.S. inbound traffic.⁵ The equal division of accounting rates reflects the fact that the traditional scheme for cable ownership has been that U.S. and foreign carriers each own only a "half circuit"; neither owns the entire circuit between the two countries.

An accounting rate is an amount negotiated on a route-by-route basis by facilities-based carriers who jointly provide international calls between two countries. The accounting rate reflects an agreed-upon amount for handling one minute of international telephone service between the two countries. Under the ISP, the settlement rate is one-half of the negotiated accounting rate and is used to calculate the net settlement payment. The settlement rate is the

⁵ Policy Statement on International Accounting Rate Reform, 11 FCC Rcd 3146, 3147 (January 31, 1996) ("Policy Statement").

same in each direction. At settlement, each carrier nets the minutes of traffic it originated against the minutes the other carrier originated. If traffic between the two countries is equal, the net settlement payment is zero. However, if there is imbalanced traffic between countries, the carrier with the greater number of outgoing minutes owes the other carrier an amount equal to the number of imbalanced minutes multiplied by the settlement rate. This amount is referred to as the net settlement payment.

A. Imbalanced Traffic Significantly Affects U.S. Net Settlement Outpayments, But Those Payments Are Not Likely To Be Changed Materially By The NPRM Proposals.

Although the Commission understandably is concerned about this country's \$4.9 billion international settlement payments imbalance,⁶ lowering settlement rates will not eliminate, and may not greatly reduce, those payments. Much of the imbalance is the direct result of United States demographics,⁷ the calling habits of U.S. consumers,⁸ the growing use of call-back

⁶ See Preliminary 1995 Section 43.61 International Telecommunications Data FCC, Common Carrier Bureau, (Oct. 11, 1996) ("1995 Section 43.61 Data").

⁷ Differences in traffic flows occur in large part because of the greater ability for U.S. consumers to afford to make international calls, often to family members who have not immigrated to the U.S., as opposed to consumers in less developed countries. Lowering settlement rates without addressing this economic disparity will not substantially alter this imbalance of outbound versus inbound minutes. In fact the imbalance may increase as U.S. consumers increase calls in response to lower rates.

⁸ See NPRM ¶ 8; see also Trends in the International Telecommunications Industry, FCC, Common Carrier Bureau, Industry Analysis Division, 1995 FCC LEXIS 4180, *95 (June, 1995) (noting that "U.S. traffic has grown faster than foreign traffic in recent years"). No matter how low the settlement rate, if calls from the U.S. continue to increase in number faster than calls to the U.S., a U.S. IMTS balance of payments deficit will persist.

services,⁹ as well as other innovations that bypass the traditional accounting rate mechanism and distort traffic flows. Ironically, although they contribute to the imbalance of traffic flows, these same factors create pressures for competitive changes and broader reform of the settlements system. U.S. net settlement outpayments actually result from differences in traffic flows, not from the absolute level of the settlement rates. If traffic flows are in balance, the net settlement is zero regardless of the settlement rate.

Quite obviously, factors such as the market forces, demographics and calling habits affecting traffic flows are beyond Commission control. The Commission's proposed actions, therefore, will not change the prevailing traffic imbalances, which most affect settlement outpayments.

B. Using A Market Based Approach Rather Than A Cost-Based Formula Is More Relevant To Assessing Whether Settlements Are Reflective As A Competitive Market

The NPRM views settlement rates as the cost to U.S. carriers of covering the foreign side (i.e. one-half) of the international circuit and the switching and local distribution costs in the foreign country. The collection rate is the unit price that the carrier charges its customer for an end-to-end call. On a single outbound call, the U.S. collection rate minus the foreign settlement rate equals the amount of money retained by the U.S. carrier to cover the U.S. half of the international circuit, switching, distribution and other costs. The foreign settlement rate

⁹ See NPRM ¶ 12 ("[S]o long as call-back is legally possible and technically comparable to conventional [international message telephone service], competitive markets will see their balance of traffic with monopoly markets shift to a very heavy imbalance of outbound versus inbound minutes.") Call back services convert inbound traffic to outbound traffic for international settlements purposes, thus further exacerbating the problem of imbalanced traffic.

theoretically covers similar costs of the foreign carrier for its participation in completing the call on its network.

Taking reported data from AT&T, the largest U.S. carrier, as an example, an analysis shows that AT&T often retains more revenue for its half of the provision of the “unbalanced” international calls originating in the U.S. than it pays the foreign carriers who complete those calls.¹⁰

An analysis using net settlements, however, better reflects the market forces affecting traffic flows and the settlements actually paid out by a U.S. carrier. This would compare the revenue retained by AT&T, for example, to cover its handling of the U.S. side of international calls (the U.S. collection rate minus the net settlement) with the compensation actually received by the foreign carrier (the net settlement). Such comparison reveals that the retained revenue exceeds the net settlement paid by substantially more than the difference between the U.S. collection rate and the settlement rate shown in the prior analysis. In 1995, AT&T, in general, continued to collect revenue from international outbound traffic substantially in excess of net settlement on a number of routes.¹¹

These comparisons indicate the complexity of this area and how focusing on only one element fails to reveal the entire picture. An examination of the data underlying those

¹⁰ See Attachment 1 “AT&T Collection Rates Compared to Settlement Rates.”

¹¹ See Attachment 2 “AT&T Collection Rates Compared to Net Settlement Rates.”

comparisons would not sustain a presumption that settlement rates are at unreasonable levels or are the primary cause of settlement outpayments.¹²

C. A Benchmark Process Could Be Related To The U.S. Competitive Market Experience.

The Commission could use a benchmark process related to the real experience of the competitive U.S. market. One market-based approach, for example, would be for the Commission to examine, for the last five-year period, the relationship among U.S. collection rates, settlement rates and compensation retained by the U.S. carriers. Thus, 1991 data from the U.S. market could be used to determine the differential between U.S. collection rates and settlement rates and be a factor in evaluating the reasonableness of foreign settlement rates for 1996. Data for each subsequent (1992-1996) year could be used to assess settlement rates for 1997-2001. This approach better takes into consideration the complex dynamics of the international telecommunications marketplace, and provides a reasonable five-year transition period to allow foreign carriers to reach the same position that the U.S. marketplace affords to U.S. carriers today.¹³ This would be a clear approach based on the U.S. competitive market.

¹² It is interesting to observe that in the Dominican Republic, CODETEL has reduced its international collection rate to the U.S. by 47% over the last four years. The average revenue per minute collected by AT&T for outbound traffic to the Dominican Republic has increased. The 1996 collection rate was lower from the Dominican Republic to the U.S. than from the U.S. to the Dominican Republic. See CODETEL filed tariffs and international traffic data reports filed with the Commission by AT&T in 1994 and 1996.

¹³ The United States might be said to have begun liberalization of the interexchange voice market in 1982 and to have opened the local exchange market on a national basis in 1996. Europe will be liberalizing its entire public switched voice market in 1998, having begun some liberalization in the late 1980's. Under those circumstances it is most reasonable to use at least a five-year window to accommodate changes for other countries.

D. Should The Commission Continue To Focus On Cost-Based Accounting Rates, It Should Recognize That Foreign Carriers Will Want to Negotiate Cost-Based Settlement Rates For The U.S. Half Of The International Call.

In the NPRM, the Commission adopts a cost-based framework for its proposed benchmark rates because, in the Commission's view, the costs paid to foreign carriers are reflected in collection rates to U.S. consumers. The Commission is noticeably silent, however, on the actual cost of providing the U.S. side of the international call.

A true cost-based system of settlement rates must depart from the historical practice of equal division of accounting rates, and necessarily implies different settlement rates for each country (or carrier). Carrier to carrier negotiations should be encouraged whereby a bilateral agreement could be reached that would result in foreign carriers paying only the actual costs of terminating a call in the U.S. Also, this would recognize different markets for incoming and outgoing calls along the same route. Such an approach would be a consistent and logical extension of the Commission's direction in the NPRM.

III. THE NPRM'S PROPOSED PRESCRIPTION OF SETTLEMENT RATES IS A SIGNIFICANT AND UNJUSTIFIABLE DEPARTURE FROM U.S. POLICY AND INTERNATIONAL PRACTICE AND MAY DISRUPT THE TREND TOWARD COMPETITIVE MARKETS.

A. The Commission's Proposal Departs From U.S. Policy And International Accounting Rates Practice.

The Commission proposes to "require" that settlement rates for U.S. carriers be at or below arbitrary benchmarks within one-to-four years, depending upon the income level of the

relevant country.¹⁴ Should foreign carriers "fail to respond to U.S. carriers' initial efforts to achieve settlement rate progress," the NPRM proposes a number of potential enforcement actions, including:

- directing U.S. carriers to settle at a rate dictated by the Commission;
- directing that U.S. carriers pay a settlement rate no higher than the benchmark rate.¹⁵

In 1992, the Commission adopted non-binding "benchmark" or "guideline" accounting rates for various global geographic regions and U.S. carriers were required to negotiate settlement rates within those non-binding benchmarks.¹⁶ The Commission expressly declined to take action beyond such non-binding guidelines or to impose settlement rates unilaterally on non-U.S. carriers.¹⁷ Instead, the Commission deferred to accounting rate reform processes underway in the world market and at the ITU.

¹⁴ NPRM ¶ 63.

¹⁵ NPRM ¶ 89. The NPRM would also require carriers to negotiate settlement rate agreements with fixed expiration dates and condition authorization for a U.S. carrier to provide international facilities-based service to an affiliated foreign market on the foreign affiliate offering U.S.-licensed international carriers a settlement rate within the proposed benchmark range. NPRM ¶ 76. Furthermore, the NPRM proposes to impose settlement rate conditions on authorizations to resell international private line services to provide U.S. switched services. NPRM ¶ 81.

¹⁶ Regulation of International Accounting Rates, 7 FCC Rcd 8040, 8040 (1992) (Second Report and Order and Second Further Notice of Proposed Rulemaking) ("1992 Benchmark Order"). The benchmark ranges were adopted as a "guideline for the amount which the Commission believes U.S. carriers should be paying foreign correspondents to terminate calls from the U.S." Id. at 8041; NPRM ¶ 26 n.32.

¹⁷ 1992 Benchmark Order at 8040, 8046 (declining to condition Section 214 authorizations on lower accounting rates); ("By setting this benchmark, we do not intend to prescribe accounting rates for any country or region. . . ") Id. at 8041.

By contrast, in the NPRM, the Commission claims authority, for all practical purposes, to prescribe settlement rates. Not only does such action depart from prior U.S. policy, but the Commission's proposed enforcement mechanisms deviate from the international practice of working through existing ITU mechanisms to promote bilateral reduction in accounting rates.¹⁸

The United States is a signatory to every major ITU telecommunications agreement of the past decade.¹⁹ The Commission has explicitly recognized that ITU Conventions and Regulations have treaty status and are binding upon the United States.²⁰ Moreover, the United

¹⁸ Id. at 8040 (reiterating the Commission's recommendation that U.S. delegates to the International Telegraph and Telephone Consultative Committee (CCITT) of the ITU seek revisions in CCITT Recommendations to bring accounting rates closer to the actual cost of terminating a call); Regulation of International Accounting Rates, 6 FCC Rcd 3552, 3555 (1991) ("1991 Report and Order") (making the same recommendation).

¹⁹ International Telecommunication Convention (Nairobi, 1982); International Telecommunication Regulations, Final Acts of the World Administrative Telegraph and Telephone Conference (WATTC-88) (Melbourne, 1988) ("ITU Telecommunication Regulations"); Constitution and Convention of the International Telecommunication Union, (Nice, 1989); Constitution and Convention of the International Telecommunication Union (Geneva, 1992), and Amendments to the Constitution and Convention (Kyoto, 1994). In addition to being signed by the United States, the Nairobi Convention was ratified by the United States Senate. 131 Cong. Rec. 17,674 (1985). The Geneva/Kyoto Constitution and Convention are currently pending ratification by the Senate, upon recommendation by the President, with the concurrence of the FCC. See Message from the President of the United States Transmitting the Geneva/Kyoto Constitution and Convention, Sept. 13, 1996, and Letter of Submittal of the Secy. of State, July 15, 1996, S. Treaty Doc. No. 104-34 (1996).

²⁰ Establishment of Commission Rules Concerning the Administration of Accounting Authorities in the Maritime Mobile and the Maritime Mobile-Satellite Radio Services Except for Distress and Safety Communications, 8 FCC Rcd. 8680, 8681 (1993) ("Accounting Authorities Rules") ("Provisions of [ITU] Conventions and Regulations have treaty status and are therefore binding on the parties thereto."); International Communications Policies Governing Designation of Recognized Private Operating Agencies, Grants of IRUs in International Facilities and Assignment of Data Network Identification Codes, 2 FCC Rcd. 7375, 7380 n.6 (1987) ("International Communications Policies") ("Under the Convention, the signatories have agreed upon certain basic regulations that member administrations. . . are

(. . .continued)

States implicitly reaffirmed its adherence to ITU principles when it revised the Communications Act in 1996 without altering its basic acceptance of international practice and direction that the Commission promulgate regulations consistent with ITU conventions and regulations.²¹

The ITU adheres to the international principle that every nation has the right to control the telecommunications facilities in its territory, including those designed to provide international service.²² The ITU Telecommunication Regulations expressly require that

bound to obey."); Nice Const., Article 6 ("The Members are bound to abide by the provisions of this Constitution, the Convention and the Administrative regulations in all telecommunication offices and stations established or operated by them which engage in international services. . .")

It is accepted U.S. and international practice to abide by treaties and other international commitments, like the ITU regulations, constitutions, or conventions, that have been signed but are pending ratification. Vienna Convention on the Law of Treaties, art. 18, U.N. Doc. A/CONF.39/27 (1969) (entered into force Jan. 27, 1980); American Law Institute, Restatement Third, Restatement of the Foreign Relations Law of the United States § 312(3) (1986).

²¹ As more fully discussed in Appendix A, section 303(r) of the Act requires the Commission to make rules and regulations necessary to carry out U.S. obligations under ITU agreements.

²² The preamble of the ITU Constitution recognizes "the sovereign right of each country to regulate its telecommunications. . . ." Preamble to the International Telecommunication Convention (Nairobi, 1982) (signed by the U.S. and ratified by the U.S. Senate); Preamble to the Constitution of the International Telecommunication Union (Nice, 1989) (signed by the U.S.); Preamble to the Constitution of the International Telecommunication Union (Geneva, 1992, as amended, Kyoto, 1994) (signed by the U.S.; pending ratification by the U.S. Senate upon recommendation of the President and the Secretary of State). See also, Preamble to the ITU Telecommunication Regulations (identical language).

accounting rates be established by mutual agreement.²³ Accounting rates are further addressed in a binding appendix, which reiterates the requirement of mutuality in establishing accounting rates.²⁴

Mutuality of accounting rates is also present in the ITU Telecommunication Recommendations, which typically represent a closely negotiated consensus among ITU members and their carriers.²⁵ ITU-T Recommendation D.140 provides that: "Accounting rates and accounting rate shares are established and revised through bilateral agreement."²⁶ ITU-T Recommendation D.140 admonishes that when negotiating such an agreement, "the Administrations concerned should, as far as possible, agree on the approach to be used."²⁷

²³ ITU Telecommunication Regulations, art. 6.2.1. & append. 1. ("For each applicable service in a given relation, administrations ... shall by mutual agreement establish and revise accounting rates to be applied between them, in accordance with the provisions of Appendix 1 and taking into account relevant CCITT Recommendations and relevant cost trends.").

²⁴ Id., append. 1, ¶ 1.1.

²⁵ "In implementing the principles of these Regulations, administrations [or recognized private operating agencies] should comply with, to the greatest extent practicable, the relevant CCITT Recommendations. . . ." ITU Telecommunication Regulations, art. 1.6.; "The Member concerned shall, as appropriate, encourage the application of relevant CCITT Recommendations by such service providers." Id., art. 1.7.b. ("CCITT Recommendations" are now referred to as "ITU-T Recommendations").

²⁶ ITU-T Recommendation D.140, "Accounting Rate Principles for International Telephone Services," (Geneva, Sept. 28, 1995) ("ITU-T Recommendation D.140"), Annex C.2.1. (emphasis supplied).

²⁷ Id., Annex C.2.3.

B. The Commission's Proposed Benchmarks May Harm Progress Toward Competition In Telecommunications Markets.

Market forces are reshaping international telecommunications, including in developing countries. Many developing countries are committed to processes and timelines that balance economic, financial, social and political objectives for their transition to competitive markets. Increased competition and developing technology have already resulted in lower accounting rates throughout the world.²⁸ Even in countries that are not yet fully competitive, international accounting rates are declining due to market forces as well as the leadership of the ITU and this Commission. Imposition of the Commission's proposed mandatory benchmarks would disrupt developing countries' balancing of objectives and the ongoing market-driven progression toward settlement rate levels that would prevail in a competitive environment.

The Commission's proposal also endangers broader U.S. policy objectives, especially advocacy of a Global Information Infrastructure.²⁹ Adoption and implementation of the NPRM would undermine the bilateral nature of international telecommunications relationships, disrupt the emerging trend toward competition, eliminate the time necessary for developing countries to undertake necessary rebalancing of tariffs and thereby postpone progress toward the

²⁸ See Accounting Rates For International Message Telephone Service of the United States, FCC, International Bureau, Telecommunications Division (Dec. 1, 1996) ("1996 Accounting Rates") (charting the change in accounting rates by country from 1985 to 1996).

²⁹ Vice President Gore has recognized five principles on which to build a global information infrastructure, namely, private investment, competition, flexible regulation, open access, and universal service. Albert Gore, Vice President of the United States, Speech on Basic Principles for Building an Information Society, in 1 USIA Electronic Journals 12 (Sept. 1996) ("Gore Speech").

achievement of universal service and access capabilities upon which the Global Information Infrastructure is predicated.

Finally, the Group on Basic Telecommunications ("GBT") talks under the auspices of the WTO have the potential to increase substantially competitive access to telecommunications markets worldwide, a development very much in line with U.S. policy and more likely than any bureaucratic proceeding to lead to appropriate international settlement rates. The NPRM's confrontational approach to accounting rate reductions will be seen by U.S. trading partners as preemptive unilateral action; it could adversely affect the GBT talks.

IV. THE NPRM'S TRANSITION PERIODS SHOULD REFLECT THE TIME ACTUALLY REQUIRED FOR DEVELOPING COUNTRIES TO REFORM THEIR SETTLEMENT POLICIES.

The Commission's proposed two-to-four-year transition periods for low and middle income countries underestimate the length of time necessary for developing countries to develop their telecommunications infrastructure and restructure long-distance and local rates. The Commission's failure to establish appropriate transition periods is contrary to its earlier recognition that "in developing countries there may be compelling circumstances that would affect the speed of transition."³⁰ GTE urges that if the Commission persists in setting benchmark rates for international settlement rates, despite the economic and legal reasons presented herein, it should more accurately tailor transition periods to individual countries'

³⁰ 1992 Benchmark Order at 8043; The special circumstances of developing countries have also been recognized by Dr. Tarjanne who warned that "any new system must provide for an adequate transition period, in particular for those developing countries which are heavily dependent on the current accounting rate system." Tarjanne Speech, June 10, 1996.

needs. For almost all developing countries, these transition periods must be longer than the Commission's proposed two-to-four years.

A. The Commission Should Consider The U.S. Experience When Establishing Time Frames For Developing Countries' Transitions To Benchmarks.

The Commission should consider the U.S. experience in implementing competition when establishing time frames for developing countries' transitions to benchmarks. The Commission cannot expect low and middle income countries to lower settlement rates to benchmark ranges within two-to-four years when the United States' own transition is requiring considerably more time. The United States essentially opened its interexchange telecommunications market in 1982. For nearly two decades, it has prepared for and adjusted to competitive telecommunications. Even today, the United States transition continues, as evidenced by its move "toward removal of barriers to competition in local markets this year with the enactment [of] the Telecommunications Act of 1996."³¹ Overall, the U.S. evolution has involved a switch from monopoly to competitive principles, the gradual elimination of cross-subsidization between long distance and local services, as well as between domestic and international services, and massive investment in additional telecommunications infrastructure.

Another illuminating example of the long transition period that realistically faces countries moving from monopoly to competitive markets is that of the European Union. The European Union, which began preparing for competition last decade and has opened some services markets, is scheduled to open its public switched voice markets in 1998. Its transition

³¹ NPRM ¶ 14.

will continue into the next decade to rebalance tariffs, establish reasonable interconnection and access charges and eliminate cross-subsidies.

Developing countries face all of these challenges and more. The extent of restructuring required and the demands placed on limited network infrastructure dictate transition periods longer than the two-to-four years provided in the NPRM. In light of the U.S. and European experiences, the Commission should recognize the need of developing countries for longer transition periods if it adopts benchmarks.

B. The Commission Should Consider The Income And Investment Needs Of Developing Countries In Setting Transition Periods.

Developing countries with low income and little investment need longer time frames for their transition to lower settlement rates. As the Commission has acknowledged, many developing countries cannot easily afford to develop telecommunications infrastructure and introduce competition in the telecommunications industry. ITU-T Recommendation D.140 recognizes that “the actual length of the period of implementation may depend on the extent of reductions agreed and/or the difference in the development of the countries concerned.”³² Developing nations in both the middle and low income categories need substantially more time to generate the investment necessary to expand infrastructure and lower settlement rates. Indeed, low income, slow economic growth, limited investment, lack of telecommunications infrastructure and dependence on settlement payments to sustain the telecommunications industry are among the reasons supporting longer transition periods for developing countries.

³² ITU-T Recommendation D. 140 ¶ 2.

1. Developing Countries with the lowest incomes and fewest resources require longer transition periods to make the greatest reductions in settlement rates.

The difference between current settlement rates and the NPRM's proposed benchmarks is generally greater for developing countries than for developed countries. Moreover, developing countries have significantly lower income levels. In effect, those countries with the fewest resources are asked to make the greatest reductions in their settlement rates in only minimal extra time. Those countries need additional time to reach benchmark rates.

One readily apparent way to tailor transition periods to the time necessary for a country to reduce its settlement rates is to relate the transition period to the gap between the current settlement rate and the Commission's proposed benchmark settlement rate. Such tailoring of transition periods to percent decrease in settlement rates is not obtained by the Commission's proposed use of income-related categories. For example, in the NPRM, those lower-middle income countries (\$726 - \$2,895) categorized in the middle income group are required to reduce settlement rates an average of 72.89% in two years. The low income countries (less than \$726), however, are required to make virtually the same reduction in settlement rates, 72.03%, but are provided two additional years.³³ The lower-middle income countries, at a minimum, should be provided the same four year transition period as low income countries.

³³ See Attachment 3 "Average Percent Decrease in Settlement Rates."